United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

76-4258

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

HENRY M. HALD HIGH SCHOOL ASSOCIATION,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF ON BEHALF OF RESPONDENT
HENRY M. HALD HIGH SCHOOL ASSOCIATION
IN OPPOSITION TO THE APPLICATION FOR ENFORCEMENT

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COUNTERSTATEMENT OF THE CASE

A. NEGOTIATION MEETINGS

On January 8, 1973 the Lay Faculty Association, Local 1261, American Federation of Teachers, AFL-CIO (hereinafter "Union") requested negotiations for the limited purpose of bargaining for salaries pursuant to a "reopener" provision in the then-current collective bargaining agreement between itself and the Henry M. Hald High School Association (hereinafter "Respondent"). The contract provided for such reopening notice six months prior to the expiration date of August 31, 1973, of the salary provisions of the parties' agreement.

Negotiation meetings were held on March 20, March 29, May 3, July 6, July 13, August 8 and on numerous dates thereafter (Tr. 16,20,32,45,47,60). During that same time period the parties were meeting in regard to separate negotiations over the closing of Respondent's Bishop Kearney High School and were meeting in regard to contractual grievances under the parties' grievance and arbitration procedure (Tr. 29, 105). The meeting on March 20 was essentially a preliminary one for purposes of introduction of the bargaining teams (Tr. 16). On March 29 the parties discussed the Union's proposals which had previously been submitted by mail (A. 4,5; Tr. 18-22). During this meeting Respondent suggested awaiting the decision of the Supreme Court on state aid to Parochial schools (Tr. 29-30).

B. MEETINGS HELD IN ABEYANCE PENDING THE SUPREME COURT'S DECISION ON STATE FINANCIAL AID TO PAROCHIAL SCHOOLS

At the May 3 negotiation meeting the Respondents provided certain information previously requested by the Union and at the end of that meeting Respondents again informed the Union that it would prefer to await the decision of the Supreme Court in the then pending cases dealing with state aid to Parochial Schools [1] before it made any formal response to the Union's salary demands. Respondent told the Union that with the current state of uncertainty over public funding for parochial schools and the uncertainty of the enrollment figures at that early point in bargaining (four and a half months before the reopening of the schools for the 1973/74 school year) that the employer's response, if it were to make one, would be that it could offer no increase in salaries or other cost items (Tr. 29,37, 275, 307, 330, A. 89).

Respondent advised the Union that it was reluctant to put forward such an offer since there had been no wage increase the previous school year (Tr. 84) and the proposal for another year without increases would cause a very strong

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1. Sloan v. Lemon, 413 U.S. 825 (1973); Committee of Public Education v. Nyquist, 413 U.S. 756 (1973).

reaction among the rank and file teachers.

The "Aid to Parochial Schools" cases were argued April 16, 1973 and a decision was expected before July of 1973. In fact, a decision was handed down June 25, 1973 and thereafter on June 27th the parties mutually agreed to meet on July 6th (A. 65-66; Tr. 44-45). Subsequent meetings were held on July 13, August 8 and numerous dates afterward until agreement was ultimately reached.

C. INFORMATION REQUESTED AND PROVIDED BY RESPONDENT

The major portion of the National Labor Relations Board's (hereinafter "Petitioner")[1a] decision that Respondent failed to provide certain requested information is that the information which was provided to the Union was not timely and was incomplete. However, there were numerous factors that prevented Respondent from supplying the exact information the Union wanted. At the same time that the negotiations were ongoing the parties had agreed that there would be a "freeze" on hiring new teachers until after the summer so that those teachers who were displaced from Respondent's Bishop McDonnell and Bishop Kearney High Schools [2]

1a The NLRB adopted the Administrative Law Judge's (hereinafter "ALJ") recommended Decision and Order without change.

2 Respondent had previously announced the closing of those schools to be effective August 31, 1973 (A. 72).

would have the first opportunity to fill any openings which occurred in the other Hald schools (Tr. 167-68). Thus, the request for names and salary information of all teachers at all the schools was impossible to satisfy because of the uncertainty of the staffing situation until after mid-August. In addition, all of Respondent's schools were on vacation during the summer and correct names, addresses and salaries could not be readily supplied for that reason (Tr. 265, 332). Finally, the salary information on file at the Respondent's central offices had just been put on computer and, because of improper programming, it was impossible to retrieve the exact information the Union requested (Tr. 265, 311-12, A. 44).

In response to the Union's initial request for a salary grid[3] from Respondent it is uncontradicted that Respondent believed the Union wanted a consolidated grid for the entire bargaining unit (Tr. 262-64) and promptly provided the Union with a grid on a bargaining unit-wide basis made up from the current salary information (Tr. 262-63, A. 12). Such system-wide grids had been utilized in prior negotiations (Tr. 78-79, 207-08) and a school by school grid was not used in the prior negotiation (Tr. 331). The Union was provided with a projected grid for the 1973-74 school year on July 12 (A.19).

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3. A grid represents a statistical summation of salary information showing the number of teachers at the various "steps" in the salary range (See, e.g., A.20).

On July 13 the Union made its initial request for the names and addresses of teachers currently employed by Respondent and also for any new teachers hired for the upcoming school year. While it is Respondent's position that it had no legal duty to provide the names and addresses of the employees in the situation, it nevertheless made an attempt to provide that information to the Union. The initial request, however, was made in the middle of the summer vacation when there was no one staffing the individual schools who would be able to provide such information (Tr. 95, 264, 332), and this information was not available at Respondent's central offices (Tr.290). Further, the freeze in hiring complicated any efforts to provide a complete list for the upcoming year.

There was no evidence offered by Petitioner or the Union as to why this information was not requested sooner, either during the earlier bargaining sessions or by letter to the Respondents. In any event, Respondent provided the Union with a list of names and addresses on August 22, 1973 (Tr. 62, GCX 21) which, because of the summer vacations and because of the freeze on hirings, was necessarily incomplete. An updated list was provided on September 10, 1973 (Tr. 66; GCX 23).

Thereafter and on August 8 the Union made its first request for salary linked to the names of the teachers.[4]

After investigating whether the Union was entitled to salaries linked to names, Respondent went about providing such lists as noted above. However, Respondent had shortly before switched over to the computer payroll system (Tr.332-34; 265, 311-12, 318-19) and had had to switch from one

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4. The Administrative Law Judge and the Board in its decision as well as in its brief to this Court err when they state that the Union made its request on July 13 (Petitioner's Brief herein, p. 8; A. 66). The Union's President, Mr. Robert Gordon, testified on cross-examination, as follows:

"BY MR. BURKE:

Q. Now, what about the salaries. When were the salaries first asked for?

A. August 8.

Q. August 8?

A. Yes.

Q. Did you --

A. That's when I first asked for them, Mr. Burke.

Q. I see ... Why did you wait until August 8 to ask for the salaries?

A. Because I did not know until that time that I was entitled to get them from you."

(Tr. 214-15)

computer program company to another because of the "mess" which had developed from the first company's programs (Tr. 312). The Union was made aware of this problem (Tr. 99, 146-47, 216; A.88). The Union was further invited to review Respondent's central files for whatever information the Union could gain from them.

On September 10, 1973 Respondent provided the Union with a list of names of teachers linked with salary (Tr. 300; GCX 23) and on October 14, 1973 a further list was provided (Tr. 70-72). The Union objected that the salary information did not include stipends. However, Respondent's position as argued below was that the Union had by agreement waived its right to bargain over stipends and other payments which were controlled at the school level and not by the Hald Association central offices (Tr.268, 292-94, 301-02, 335).

D. THE SPECIAL STATUS OF BISHOPS KEARNEY AND McDONNELL HIGH SCHOOLS

As part of his decision the Administrative Law Judge found that Respondent failed to bargain because of its refusal to discuss the salaries of those teachers at Bishop McDonnell or Bishop Kearney High School for the upcoming school year. However, it is admitted by all parties that these schools had been announced as being closed at the end of the 1972-73 school year (A.72). Since the parties were

only bargaining for salaries in regard to the active schools for the 1973-74 school years, there would be no teachers of Respondent to bargain over during the negotiations at those two schools.

The Administrative Law Judge found that the Respondent had a duty to bargain over the effects of the closings with the Union and that the Union had a bona fide duty for bargaining with Respondent over these schools and that Respondent breached the Act by not doing so.

However, the Administrative Law Judge ignored the fact that testimony showed that negotiations had already been conducted in regard to the effects of closing these schools and he further ignored the fact that two National Labor Relations Board cases were pending on that exact issue.[5]

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5. The Board ultimately found that Respondent had bargained over the closing of Bishop Kearney High School and had no duty to bargain further over the effects of the closing of that school. Henry M. Hald High School Association, 213 NLRB 415 (1974) and 216 NLRB 512 (1975). In the first case the Board adopted the holding of the Administrative Law Judge wherein that ALJ stated:

> "Moreover, respondent Hald fulfilled its duties to bargain when it complied with that section of the union agreement providing for the referring of tenured teachers 'to substantially identical teaching positions' in other member schools when their employment is terminated due to consolidation or closing of a member school . . . In any event, respondent Hald offered to bargain and did bargain about the matter. The complaint against respondent Hald should be dismissed in its entirety." 213 NLRB at 422-23.

The Bishop McDonnell closing was never litigated before the NLRB. But, in any event, any discussions concerning the effects of the closing of the schools had nothing to do with negotiations looking forward to pay increases in the following year for teachers at the remaining member schools of the Hald Association.

E. CLOSING OF THE CASE

Respondent, while protesting the Board's decision, complied fully with the Board's order and subsequently the Regional Director of Region 29 notified Respondent that he had received suitable proof of Respondent's compliance and was closing the case as of January 22, 1975.

I.

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE DOES NOT SUPPORT THE BOARD'S FINDING THAT RESPONDENT VIOLATED THE ACT BY FAILING TO MEET WITH THE UNION.

The essential facts in regard to the number and dates of meetings are not in controversy nor are there any serious credibility issues on the record which had to be determined by the Administrative Law Judge. Thus, the question whether Respondent's behavior in meeting for negotiations violated the Act may be determined as a matter of law.

The Union requested a reopening in the second year of the three-year collective bargaining agreement on January 8, 1973. The reopener provision was limited to "wages" to be effective as of September 1, 1973 (A. 2). Respondent promptly answered the Union's request (A. 3). The first meeting for negotiation was set for March 15 at the Union's suggestion (Tr. 15) and was later postponed by mutual agreement to March 20 (Tr. 16-17). At the subsequent meeting on March 29 the Respondent informed the Union that it would prefer to await the decision of the Supreme Court in the case involving state aid to parochial schools before it put a formal offer on the table (Tr. 29-30). The Union objected to the suggestion. During that discussion the

Union was told that if the Respondent were forced to put an offer on the table it would have to be an offer of no increase or status quo until after the Respondent could determine what aid it would receive from the State and what enrollment it could look forward to in the coming year (Tr. 307, 330). Nevertheless, the parties did meet again on May 3, at which time the Union demanded a response and the Employer again told them that if it had to make a formal response it would be of no increase and that it was reluctant to make such a formal offer (Tr. 307, 330). After that meeting and in response to the Union's demand for further meetings prior to the Supreme Court decision, Mr. Edward Burke, the Chief Negotiator for Respondent, wrote to Mr. Kranepool, the then Union President, and again explained the Respondent's position. That letter is set forth at A. 38 in the record herein.

Significance of Supreme Court Decisions

The ALJ finds that Respondent's desire to defer bargaining until after the Court's decision was indicative of dilatory conduct which evidenced a failure to bargain in good faith. This finding completely misconstrues the purpose behind the Respondent's request.

Witnesses for Respondent testified without contradiction that the schools were in such a financial condition that government aid was of paramount importance. In addition, it was impossible at that early date to make an accurate estimate of enrollment figures to determine what monies would be available. Thus, the only wage offer which could be made prior to the court decisions was the holding of salaries at a status quo level (Tr. 307-09, 330, 343). Additionally, the Respondent felt that, with sufficient time remaining to resolve salary issues, joint action in awaiting the court's decisions would be beneficial to both sides and still allow more than sufficient time to complete bargaining (Tr. 329, 330).

Note that this was not a mere refusal to make proposals; rather, it was a suggestion, in an unusual and unique set of circumstances, to avoid harmful counter-productive effects which might have resulted if a formal offer of no increase was made at that time.

The significance and importance to Respondent of the then-pending Supreme Court cases dealing with State aid to Parochial Schools cannot be overemphasized. The future of religious secondary school education in America turned upon the decisions in those cases.

The importance of the court decisions is accurately reflected in newspaper reports and commentaries after the court's decision holding that state aid to parochial schools was unconstitutional:

> "A terrible financial blow ..." "A crushing ... fatal ... blow" (Long Island Press, June 26, 1973).
>
> "The decision ... will necessitate serious financial belt-tightening by the Catholic Schools. Schools will be closed due to this decision." (New York Post, June 26, 1973).
>
> "A loss of 28 million dollars in aid to parochial schools in New York State ..." (New York Times June 26, 1973).

The significance of state financed aid can further be seen in the fact that Respondent Hald had already closed two of its schools - Bishop Kearney and Bishop McDonnell - due to financial reasons prior to the 1973 decision of the Supreme Court.[6]

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6. Subsequent to the decision five more of the Hald schools closed, three of which were closed by Hald and subsequently operated by independent Regional Boards of Directors made up generally of lay and religious persons from the Brooklyn and Queens communities.

The request to await the court's decisions was not an "open-ended" request. The court had heard oral arguments on April 16, 1973 and decisions were expected prior to the end of that term. The decisions were, in fact, handed down on June 25, 1973.

The Union was never told that an offer would not be forthcoming (Tr. 299), but rather, that if Respondent were forced to make an offer prior to the Supreme Court decisions, it would have to be one of no across-the-board increase (Tr. 299).

Other than the absence of meetings between May 3 and the Supreme Court's decision on June 25, 1973 there was no evidence or finding of delayed meetings. That six week period "when viewed in the context of the full record does not demonstrate bad faith, either by itself, or in connection with other evidence." Caroline Farms Div. v. NLRB, 401 F.2d 205 (4th Cir. 1968).

Considered with regard to the time remaining until the expiration date of the contract and the limited subject of bargaining, the request made in late March and early May to defer bargaining negotiations until after the Supreme Court's decisions (which, as expected, were handed down in late June) was not a dilatory tactic. It was, rather, an effort to avoid taking a counterproductive position which

would have damaged employer-employee relations and would have hindered the collective bargaining efforts. Respondent's action clearly served to promote the purposes of the Act rather than to violate any of its provisions.

II.

RESPONDENT HAD NO DUTY TO FURNISH NAMES AND ADDRESSES IN THE FACTUAL CONTEXT REVEALED IN THIS RECORD; THE RESPONDENT PROVIDED TO THE BEST OF ITS ABILITY ALL OTHER INFORMATION REQUESTED BY THE UNION.

A. NAMES AND ADDRESSES

Petitioner cites the two Supreme Court decisions which set forth the standards that must be met when a Union requests an Employer to furnish the names and addresses of employees in the unit. These standards relate to need and relevancy. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956).

The Union had no compelling need to secure this information from Respondent. Preliminarily, neither the Board [7] nor the courts has held that an Employer must supply the names and addresses of its employees to the bargaining agent if that agent had alternate means of reaching those employees. Here the Union, as will be shown, had within its grasp adequate alternate means of obtaining the names and addresses of the lay teachers.

Petitioner cites and relies upon this Court's decisions in United Aircraft Corp. v. NLRB, 434 F.2d 1198, cert. den. 401 U.S. 993 (1971) and Prudential Insurance v. NLRB, 412 F.2d 77, cert. den. 396 U.S. 928 (1969)

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7 Magma Copper Co., 208 NLRB 329 (1974); see Autoprod, Inc., 223 NLRB 101 (1976) [Chairman Murphy, dissenting].

United Aircraft and Prudential established the following criteria as a guide for determining whether a Union had alternate means to gather the information on its own:

1. Size of Unit (both numerical and geographical)
2. Rate of turnover of unit members.
3. Nature of Union Security Clause
   (a) Percentage of Union members in unit.
4. Ability of Union to reach members and non-members.
   (a) Steward system
   (b) Bulletin Boards
   (c) Handbilling
   (d) Residential dispersal of unit employees
5. Availability of information to the Employer.

While the facts of United Aircraft and Prudential all led to the conclusion that the employers therein were required to supply the unions with names and addresses, the facts in the instant case show that the Union had alternate, readily accessible means to procure the information desired.

For example, the number of employees in the units in the cases cited above ran from over 15,000 (Prudential) to over 26,000 (United Aircraft)[8] whereas here, the unit consisted of less than 500 teachers (Tr. 117) in seven relatively contiguous locations within the boroughs of Queens and Brooklyn, New York. For another example, the rate of turnover in this unit is minimal (Tr. 178) and does not approach that of large industrial concerns such as those in Prudential or United Aircraft.

Further, although the parties have no "union shop" agreement, it is clear that the union membership is "in the vicinity of 400" of the lay teachers out of a total of 500, or 80 percent (Tr. 110, 111, A.87). In addition, the union conceded that it already had names and addresses for about "400 or so" lay teachers (Tr. 111); it had one or more "delegates" in each school (Tr. 121, et seq.) and it had access to the teachers' school mail boxes during the school year (Tr. 125). Finally, the collective bargaining agreement required Respondent to give new teachers the certain information regarding the Union at the time of the teachers orientation (Tr. 129, GCX 2, ART. 33).

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8 In the 9th Circuit case of Standard Oil v. NLRB, 399 F.2d 639 (1968), cited by Petitioner and noted with approval by the Court in Prudential, the Unit consisted of over 1,500 members.

Handbilling, as an alternative to residential mailings, clearly would not be onerous where, as here, the school locations are within two adjacent counties and each school has an active Union delegate. This is not a case such as Prudential where residences were scattered in a non-urban area. Here, we find an employment situation located in an urban center where all the standard communication media are available to the Union.

Judge Friendly put the matter succinctly in his dissent in Prudential:

> "None of the foregoing is meant to indicate that the Union's means of communication with the non-member agents were ideal. The law does not require that they should be." 412 F.2d 77, 86.

Finally, the substantial evidence is that the names and addresses, by school, were not readily available in Respondent's central offices, and that only the school principals had ready access to such information (Tr. 284).

By the time the Union requested the names and addresses on July 6 (Tr. 46) and after Respondent discovered that its computer could not provide such a list (Tr. 265) it was too late in the summer to get the principals to complete such a list (Tr. 283-84) with classes scheduled to resume in early September.

The Respondent's central file of teachers consisted only of the teachers'application blanks and contained, in

alphabetical order, the names of all teachers not only in the 7 Hald Association schools but also of 25 other Catholic High Schools within the Diocese of Brooklyn (Tr. 288-90). Thus the selection of Respondent's teachers by school from the central files would have been nearly impossible.

Given the total circumstances in this case and remembering the Supreme Court's caveat in such cases that "[E]ach case must turn upon its particular facts" Truitt Mfg. Co., supra, at 351 U.S. 149, 153 the Respondent was under no obligation to furnish the names and addresses of the unit teachers.

Employer's Good Faith Effort

Even though Respondent was under no legal compulsion to supply the Union with the names and addresses of the lay teachers, the Respondent, nevertheless, supplied the Union with such information as it had available.

In July of 1973, the Union first requested the names and addresses of the lay teachers in the Hald Association schools (Tr. 46). This request, it should be noted, occurred three months after negotiations opened and, more importantly, after the schools had closed for summer vacation. Despite the

untimeliness of this request, the Respondent did provide a list of names and addresses during the week of August 22, 1973.

The Union objected to the fact that "new hires" were not shown on the list. However, given the freeze on hiring which had existed into the summer of 1973, and the fact that the individual schools were not fully staffed during the summer (Tr. 95), this was the best information that Respondent had. Minor omissions or errors in the list were clearly not purposeful or an indicia of bad faith. An additional list was, in fact, sent to the Union on or about the 10th of September 1973 (GCX 23, Tr. 66) containing names and addresses as well as salaries of the lay teachers.

The totality of the evidence on the record as a whole-the closing of two Hald Association schools; a freeze on hiring; the untimely request for names and addresses and the lack of any legal obligation upon Respondent's part to provide such information-compels a finding that the Respondent's actions were all that could reasonably be expected of it and were, accordingly, not in violation of the Act.

B. SALARY-RELATED INFORMATION

In prior years, the parties used a salary "Grid" as a basis for negotiations (Tr. 78-79, 207-08). The Union requested such "Grid" information at the beginning of the negotiations in question in March of 1973 (Tr. 20). The Respondent promptly supplied the Union with a consolidated Grid giving salary steps and number of teachers per step for all the Hald Schools (GCX 12). The Grid was consolidated because the Union had not initially requested such information on an individual school basis (Tr. 263, 330).

Respondent had reason to expect that the Grid would suffice, since it had been the basis of wage negotiations in the past (Tr. 331). In addition, both previous and present negotiations had dealt with "across the Board" increases, and the Grid sufficed for these negotiations (Tr. 224). The fact that across the Board increases were again dealt with in the 1973 negotiations gives rise to serious questions as to the relevance of the Union's later request for Grids on a per school basis. By the time a "per school" Grid was requested, those schools were on vacation and the data was not readily available. [9]

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9 "The problem here does not appear to have been reticence on the part of the Respondent to supply information but ineptness of the Union representatives in describing what was wanted and their leisurely pace in getting around to it." Alkahn Silk Label Co., 193 NLRB 167, 172 (1971).

The Union objected to the fact that a 1972-1973 Grid was first provided. Testimony on cross examination shows, however, that the request for more detailed Grids was not initially made (Tr. 263). The Union admitted that, since new teachers were not hired in 1973 until late summer and that there was a hiring "freeze" during the summer of 1973, (until teachers from the Kearney and McDonnell schools had an opportunity to transfer), this, in fact, constituted a new personnel situation not in effect in prior years (Tr. 167-8). Thus, it would have been "difficult", if not impossible, to prepare the Grids for the 1973-1974 school year in the spring of 1973 (Tr. 97). Even so, a 1973-1974 Grid was mailed to the Union on July 11, 1973 (GCX 19).

The initial request for salary information linked to names of teachers was made on August 5, 1973 (Tr. 214)[10] almost five months after negotiations had begun. The Union was told that the Respondent would "look into" supplying salaries linked to names (Tr. 332). Subsequently, Respondent's legal counsel prepared a memorandum of law dated August 13th on that subject that said, in effect, that the information had to be supplied to the Union and that Respondent was so informed (Tr. 333). The Respondent set about to gather the necessary data (Tr. 333).

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10 Although Union witness Kranepool testified that he "was almost sure ..." that he had requested salary information on July 13 (Tr. 48), Union witness Gordon testified positively that the request was made on August 8th (Tr. 214). In addition, Kranepool testified that the first time the request was put in writing was August 8th (Tr. 109) and that it was his practice to send letters of confirmation promptly in matters of importance (Tr. 105).

Respondent attempted to get the information for the Union from Respondent's Accounting Department (Tr. 264). The Accounting Department could not provide the information in the form the Union requested (Tr. 265). As noted above, the Hald Association's schools had been converted to computer payroll the month before the request for linked salary information was made. That conversion "... was not highly successful .... It was with great difficulty we were able to get any kind of information." (Tr. 265). A representative of the firm presently doing the programming for Hald's computer testified that the original programmer "Payroll Corp. of America", was now defunct (Tr. 311) and that the programs purchased from "Payroll" were "sloppy" (Tr. 312). The new programmer could not provide the information due to ongoing problems with the original programs. The appropriate names and addresses of the unit members could not be culled from the computer tapes because there were several scource tapes and the computer was not set up to extract the lay teachers or teachers on a school by school basis from the comprehensive computer tapes (Tr. 318-19).

The Union was kept informed of these problems with the computer (Tr. 99, 146-47, 216). Meanwhile, Respondent provided the linked information that was available. A list of names and addresses and salaries used for summer paychecks was provided for the Union (GCX 23, Tr. 300) on or about September 10, 1973.

Thereafter on or about October 14th (Tr. 70), the Respondent provided the Union with an updated list providing names and addresses and salaries of new teachers, and also showing the latest wage increases for the 1973-1974 school year (Tr. 71-72). The Union complains, however, that pay items for extracurricular activities were not included on this list. However, no records concerning such items were kept except at the local schools. Further, it had been agreed at the 1972 negotiations that extracurricular stipends were matters to be negotiated between the individuals and the local schools and were not to be part of the overall negotiations (Tr. 268, 292-94, 301, 302, 335).

During the period in which problems existed with respect to the computer, the Union was invited by Respondent to use its files so that the Union might cull the needed information (Tr. 268-69). In spite of that offer, the Union did not avail itself of that opportunity (Tr. 268).

Given the virtually insoluble computer problem, the lack of central control files and the start of a new school year with its attendant confusion, and given the fact that 2 Grids, three print-outs of names, addresses and salaries

were provided to the Union, and in light of the contractually limited scope of the re-opener negotiations, it seems clear that the substantial evidence on the record as a whole reveals that, at worst, the Union was provided information that was not precisely what the Union had demanded but, nevertheless, was the best that the Respondent could provide. "In any event, the Board has heretofore taken the position in cases such as this that 'It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining.'" NLRB v. Truitt Mfg. Co., supra at 351 U.S. 151. (Citing cases)

The record reflects a good faith effort of Respondent to comply with the Union's valid demands for salary information and also to provide addresses for unit employees although there was no legal compulsion to provide the Union with the unit employees' addresses. Any violation of the Act is clearly de minimus and no purpose is to be served by enforcing the Board's Order. See Chevron Oil Corp. v. NLRB, 442 F.2d 1067, (5th Cir. 1971) [no pursuit of deliberate course of delay in meeting or providing information -- no violation].

III.

THE RESPONDENT HAD NO OBLIGATION TO BARGAIN CONCERNING SALARIES AT BISHOP KEARNEY AND McDONNELL HIGH SCHOOLS FOR THE 1973-1974 YEAR

The Respondent has admitted that it refused to provide information or to bargain concerning Bishop Kearney or Bishop McDonnell High School for the then upcoming 1973-74 school year (Tr. 325). Since these schools were to be closed and no longer a part of the Hald Association Schools as of August 31, 1973, the Hald Association had no legal obligation to bargain over the conditions in these schools.

The status of the Bishop Kearney High School was the subject of an NLRB hearing reported at 213 NLRB 415, wherein the Board found that Hald Association's duty to bargain over that school ceased as of August 31, 1973, and that the Hald Association had fulfilled its duties to bargain over the decision and effect of closing Bishop Kearney High School. The Bishop McDonnell school was closed on August 31, 1973 (Tr. 103) and its situation vis a vis bargaining was identical to Bishop Kearney's.

There is no issue in this case concerning terms and conditions of employment at Bishop Kearney and Bishop McDonnell High Schools for the period 1973-1974. The Union's Vice President testified that meetings concerning the status of Bishop Kearney and Bishop McDonnell High Schools were occurring independent of the salary negotiations in respect to the re-opener in the spring and summer of 1973 (Tr. 105).

It seems clear that the Union was seeking to protect its claim that it represented all teachers in the unit and that the unit included the Bishop Kearney School regardless of who operated the school. Respondent on the other hand sought to protect its position that it had no employees at Kearney (or McDonnell) after August 31, 1973. Since negotiations concerning the effects of closing the schools were ongoing separately, the Union's request for wage information for teachers at Kearney and McDonnell was solely for the foregoing reasons and not for any purposes of protecting the salary rights of teachers who transferred from those schools to other Hald schools.

Considering the prior Board case in which the Board found that Respondent had bargained over the closing of Bishop Kearney High School (Bishop McDonnell being the same situation) and the fact that the re-opener dealt only with the then upcoming 1973-1974 school year, when both schools would have no teachers employed by the Respondent, there existed no obligation on Respondent's part to bargain concerning teachers' salaries for these schools for the school year 1973-1974.

CONCLUSION

The Board's Order is not supported by substantial evidence on the record and should not be enforced by the Court.

Respectfully submitted,

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Edward J. Burke
Howard G. Estock

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

JULIO VALLEJO, JR., being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 703 REMSEN AVE. BROOKLYN, NYC.

That on the 25th day of APRIL, 1977, deponent personally served the within BRIEF ON BEHALF OF RESPONDENT HENRY M. HALD HIGH SCHOOL ASSOCIATION IN OPPOSITION TO THE APPLICATION FOR ENFORCEMENT upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

~~By leaving _____ true copies of same with a duly authorized person at their designated office.~~

By depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

ELLIOT MOORE
Deputy Associate General Counsel
National Labor Relations Board
Washington, D. C.

Julio Vallejo, JR

Sworn to before me this

25th day of APRIL, 19 77.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979